

*Before the*

**SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE  
PROTECTION AND CYBERSECURITY  
OF THE  
COMMITTEE ON HOMELAND SECURITY  
UNITED STATES HOUSE OF REPRESENTATIVES**

*Statement of*

**DAVID S. McCLIMON, PRESIDENT  
CON-WAY FREIGHT Inc.  
ANN ARBOR, MI**

*Representing*

**THE AMERICAN TRUCKING ASSOCIATIONS, INC.**

*On*

***SAFE Truckers Act***

June 16, 2006



***Driving Trucking's Success***

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Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today on behalf of American Trucking Associations, Inc. (“ATA”) on the subject of screening truck drivers transporting hazardous materials (“hazmat”). My name is David McClimon. I am President of Con-way Freight Inc., a less than truckload carrier headquartered in Ann Arbor, Michigan. Con-way Freight Inc. is a \$2.8 billion freight transport company with over 21,000 employees located in 440 service centers located throughout the United States and Canada. I am here on behalf of ATA, a federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. ATA’s membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

ATA appreciated the opportunity to testify before this Subcommittee on reforming hazmat security last November. While many of the points in that testimony remain equally relevant today, I will try to refrain from being repetitive. ATA appreciates the Subcommittee’s interest and continued attention to this matter. ATA would like to thank Chairman Lungren, Ranking Member Sanchez, and other Members for introducing the SAFE Truckers Act of 2006 (H.R. 5604), which embodies a common sense, risk-based approach to the threats posed by the transportation of certain materials.

#### Overview:

Shortly after the tragic events of September 11, 2001, Congress passed the USA PATRIOT Act in an effort to better secure the United States against future terrorist attacks. Among its numerous provisions was a requirement that all drivers seeking, renewing, or transferring a hazardous materials endorsement (“HME”) to their commercial driver’s license (“CDL”) had to undergo a security threat assessment. While the provision was no doubt well-intentioned, it was enacted with little debate or discussion. Unfortunately, it has led to the unfortunate result that a driver must subject him/herself to a costly and burdensome security threat assessment in order to be authorized to transport such everyday hazmat as paint, perfume and soft drink concentrate (which require a HME when transported above certain threshold quantities). ATA believes that requiring security threat assessments of individuals that transport paint, perfume and other everyday commodities was an unintended consequence of legislation meant to protect against real risks to homeland security, i.e., transportation of security sensitive materials.

The leadership at the Department of Homeland Security (“DHS”) and the Transportation Security Administration (“TSA”) has embraced the notion of a risk-based approach to security. The SAFE Truckers Act provides a legislative framework authorizing DHS and TSA to implement a risk-based approach. It requires DHS to specifically identify materials in amounts and form that pose a significant risk to homeland security due to their potential for use in an act of terrorism. Drivers who transport these identified materials above designated quantities would be required to undergo a fingerprint-based security threat assessment. Drivers and their employers who do not transport materials that are identified as posing a significant risk would not have to bear the costs and burden of undergoing a fingerprint-based security threat assessment. This approach will allow for appropriate focus on the security risk without

jeopardizing the ability of motor carriers and drivers to continue transporting those materials which do not pose a significant risk from a security standpoint.

My company, Con-way Freight Inc., is like many other trucking companies when it comes to hazmat transportation. Although hazmat shipments only make up roughly 3.5% of our overall shipments (roughly 2,000 hazmat shipments daily), all of our 14,500 drivers have HME's. From an operations standpoint, we often do not know in advance which drivers will be called upon to transport hazmat and therefore must ensure that all of our drivers possess a valid HME. However, our most frequently transported hazmat is paint or paint-related material. We do not see why it is necessary to subject all of these drivers to an additional security threat assessment on top of meeting the longstanding safety requirements as currently set forth in the HME regulations. For illustrative purposes, if the list of materials identified as posing a significant security risk mirrored the list of materials for which Congress requires carriers to obtain a special security permit (the "Section 5109 list"), my company would only have 16 covered shipments per day. We would be able to narrowly focus the security requirements, including the fingerprint-based security threat assessments, on the drivers of these security sensitive shipments.

The trucking industry has long been dedicated to improving the safety of truck transportation. Similarly, the trucking industry has done much – most of it voluntarily – to ensure the security of truck transportation. It is in the industry's interest from both a customer relations perspective and a financial bottom line perspective. At Con-Way, even though it is not required, we do criminal history record checks on our drivers using third party services that review available records from pertinent jurisdictions. However, at a time when the public and private sectors alike have limited resources, our security efforts must be focused on the most significant risks. The imposition of burdensome and costly programs governing the transportation of hazmat, such as the hazmat background check program, threatens to erode the industry's ability to continue to deliver the goods that the consumer expects. By determining what hazmat truly poses a significant risk and not requiring a fingerprint-based threat assessment for drivers transporting non-threatening hazmat commodities, Congress will be eliminating many of the costs and burdens imposed by TSA's implementation of the USA PATRIOT Act provision while still promoting and protecting homeland security.

#### From a Security Perspective, Not All Hazmat is Created Equally.

*There is a need to distinguish hazmat that poses a risk to homeland security from hazmat that poses no significant security risk.*

Congress was rightly concerned about the security of transportation of certain hazmat when it passed the PATRIOT Act. However, by tying the security assessment program to the issuance, transfer or renewal of the HME, Congress greatly overshot the mark. Drivers who haul any placarded load, regardless of the nature of the hazmat, are subject to a fingerprint-based background check. The SAFE Truckers Act would recalibrate the program and direct DHS to focus on those materials that truly pose a significant risk to homeland security.

Materials that have been designated as hazmat by the Secretary of Transportation have been so designated due to characteristics that require special *safety* considerations while the material is being handled or during clean-up in the event of a release. Similarly, the CDL has always been utilized to indicate a driver's qualification to *safely* drive a commercial motor vehicle and, with respect to the hazmat endorsement, as a measure of the driver's knowledge of the hazmat regulations to *safely* transport placarded quantities of hazmat.

The security objective associated with screening individuals in the transportation sector is significantly different from the safety objective underlying the hazmat regulations and the qualifications for an individual to obtain a HME. Therefore, experts in security (both within and outside government) need to closely examine the universe of hazmat from the perspective of risk to homeland security. While parties may disagree as to what materials or quantities should or should not be designated security sensitive, the SAFE Truckers Act provides much-needed guidance on where the focus should be; namely, materials that pose a significant risk due to potential for use in an act of terrorism. We believe that all parties will agree that items like paint, perfume, and soft drink concentrate do not fall within the criteria. ATA is pleased that the SAFE Truckers Act provides that the designation of materials as security sensitive shall be finalized only after notice and opportunity for public comment.

*If screening is still deemed necessary for drivers who transport hazmat that is not a security sensitive material, then it should be name-based instead of fingerprint-based.*

TSA designed the current hazmat background check program to be fingerprint-based, although the terrorist databases and watch lists are populated with names only and the criminal history records databases can be searched using names (as evidenced by the National Instant Criminal Background Check System ("NICS") utilized to check the criminal backgrounds of gun purchasers). This requirement has added significant costs: both direct costs in terms of fees charged to offset the costs of collecting and processing fingerprints (\$94 in the majority of states) and indirect costs in terms of driver time off work (a full day off in some states, such as Montana, with limited fingerprint collection centers). These costs and the added inconvenience to drivers – not the prospect of being found to be a terrorist – are dissuading more and more drivers from obtaining HMEs.<sup>1</sup>

The SAFE Truckers Act properly focuses a fingerprint-based background check on designated security sensitive materials. The industry can accept reasonable costs associated with this risk-based approach, requiring a fingerprint-based check. However, ATA recommends that the SAFE Truckers Act also include provisions to eliminate the fingerprint-based screening for hazmat that is not security sensitive and, if any background check is retained, that it be limited to name-based screening. Name-based screening would eliminate the need to travel great distances to submit fingerprints and should not cost more than a nominal fee, if anything (TSA has

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<sup>1</sup> To our knowledge, the only publicly available numbers for the HME background check program from TSA were contained in a November report to Congress required by the highway bill. As of November 2005, TSA stated they had processed 88,782 applications nationwide. Conservatively assuming the program really got started on May 31, 2005 (when it became effective for renewals and transfers as opposed to the January 31, 2005 date for new applicants), the TSA number projects to a monthly average of 17,800 applications and 213,600 per year. Over 5 years, the projected number of applications is 1.068 million – far short of the 2.7 million HME drivers that TSA stated existed prior to commencement of the background check program.

conducted numerous name-based checks of individuals, including the 2.7 million HME holders, without charging additional fees). The industry does not need a security sensitive permit program on top of preserving the current hazmat background check program as is.

### Suggested Improvements to the SAFE Truckers Act

ATA is encouraged by the introduction of the SAFE Truckers Act. With some suggested modifications, the SAFE Truckers Act can first and foremost address specifically identified risks to homeland security posed by transportation of security sensitive materials without unduly burdening those that rely on the efficient transportation of hazmat that does not pose a significant risk. ATA looks forward to working with the Members of this Subcommittee to enact a bill the trucking industry can fully support.

*The security sensitive material permit program must modify and replace part of the existing hazmat background check program – not simply create an additional program.*

ATA's support of the bill presumes that the legislation will be modified during Subcommittee deliberations to address some of the industry's substantial concerns. The primary concern, as mentioned before, is that the fingerprint-based background check required for a security sensitive material permit should replace – and not simply be in addition to – the current background check required under 49 U.S.C. 5103a. Simply put, the States should be prohibited from requiring a fingerprint-based background check to obtain a simple HME. The federal government should be responsible for screening and permitting of individuals transporting security sensitive materials.

*The security sensitive material permit program should be seamlessly integrated into a global screening solution.*

This Subcommittee has oversight of a number of security programs that require threat assessments of individuals. In fact, this Subcommittee recently worked on comprehensive port security legislation that affects truck drivers, including addressing issues with the Transportation Worker Identification Credential ("TWIC"). These security programs should not be conceived and then administered in a vacuum. They should be integrated and coordinated in a manner to avoid duplication to the maximum extent possible.

Specifically, ATA is encouraged by the language in the SAFE Truckers Act that calls for integration of the security sensitive material permit with the TWIC. Yet even so, ATA has reservations that the legislation may be unnecessarily complicating matters. Because the disqualifying criteria for the security sensitive material permit and the TWIC card are identical, it seems that the TWIC, without further modification, could serve as the security sensitive material permit. The TWIC would indicate that an individual has successfully completed a fingerprint-based security threat assessment (a requirement for the security sensitive material permit). Additionally, since security sensitive materials will in all likelihood be a subset of hazmat, the individual will also have a CDL with a HME. These documents would be sufficient to demonstrate to enforcement officials that a driver is authorized to transport security sensitive materials from both a safety and a security perspective.

The intent of the TWIC was to establish one background check and one credential for transportation workers. Trucks connect various secure areas and facilities. Wherever possible, the screening and credentialing programs for access to these secure areas, and for transportation of security sensitive materials, should be brought within one check resulting in one credential. The time to address this, with respect to the security sensitive material permit, is now. Past experience has shown that we cannot rely on DHS or TSA to achieve this on their own accord. The same TWIC that will demonstrate a truck driver has successfully been screened for access to maritime ports should also serve, in conjunction with the HME, as the security sensitive material permit.

*Uniformity is necessary to achieve a consistent level of security nationwide.*

The industry has another concern that impacts the SAFE Truckers Act and other security screening programs – the need for uniformity. Homeland security is one of the preeminent federal interests. Permitting states to implement their own screening requirements not only leads to confusion and greater costs but also jeopardizes the collective security of the whole. Within the current hazmat background check program, the state of New York requires a check of the state's criminal history records databases in addition to the federal criminal history records. If the state of New York has properly uploaded all its appropriate criminal history records into the federal database, there is no need to check the state databases in addition to the federal database. However, if the state of New York has not uploaded all of its data, then the other states (which rely on the federal database when conducting criminal history record searches) are put at risk. For example, an individual applying in Connecticut could be granted a security sensitive material permit where that same individual could be denied if applying in New York, since New York had information it did not share with the federal database. This is no way to provide security nationwide. The solution is to preempt states from adding additional screening requirements where the federal government has already set in place a program and encourage the states to timely upload the appropriate data into the federal databases.

*Notification to the employer is necessary to ensure the most effective security.*

Congress has recognized that failure to notify employers of the final security threat assessment determination under the current hazmat background check program creates an unnecessary risk. Therefore, as part of the highway reauthorization bill, Congress enacted a provision authorizing notification of the employer when TSA has finally determined that a driver poses a security risk warranting denial of the HME. The same rationale that led to Congressional action holds true for the security sensitive material permit program proposed under the SAFE Truckers Act. We strongly encourage the Subcommittee to restore the employer notification requirement in the event a driver is finally determined to pose a security risk warranting denial of a security sensitive material permit.

### Conclusion

Mr. Chairman and members of the Subcommittee, I thank you for the opportunity to share with you the trucking industry's views on the current hazmat background check program and the

recently introduced SAFE Truckers Act. If the security sensitive materials permit program established by the bill replaces the current fingerprint-based screening of individuals transporting any hazmat, the trucking industry enthusiastically supports the legislation. If DHS and TSA truly are committed to a risk-based approach to security, then the SAFE Truckers Act grants them the authority to act on that commitment. ATA appreciates the efforts by this Subcommittee to achieve security rationally and reasonably.